

# **Exhibit D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,  
Plaintiff,

CIVIL ACTION  
NO. 1:CV 01-0725

vs.

COMMONWEALTH OF PENNSYLVANIA,  
NINTH JUDICIAL DISTRICT,  
CUMBERLAND COUNTY; CUMBERLAND  
COUNTY; S. GARETH GRAHAM,  
individually, and JOSEPH  
OSENKARSKI, individually,  
Defendants.

Deposition of: **HON. HAROLD E. SHEELY**

Taken by : Defendant Cumberland County

Date : February 25, 2003, 10:10 a.m.

Before : Emily Clark, RMR, Reporter-Notary

Place : Administrative Offices of  
Pennsylvania Courts  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania

APPEARANCES:

DEBRA K. WALLET, ESQUIRE  
For - Plaintiff

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS  
BY: A. TAYLOR WILLIAMS, ESQUIRE  
For - Defendant Commonwealth of Pennsylvania  
Ninth Judicial District, Cumberland County

THOMAS, THOMAS & HAFER  
BY: JAMES K. THOMAS, II, ESQUIRE  
PAUL J. DELLASEGA, ESQUIRE  
For - Defendant Cumberland County

APPEARANCES (continued):

MONTGOMERY, McCracken, Walker & Rhoads, LLP  
BY: DAVID J. MacMAIN, ESQUIRE  
For - Defendant S. Gareth Graham

SWEENEY & SHEEHAN, P.C.  
BY: PAUL LANCASTER ADAMS, ESQUIRE  
For - Defendant Joseph L. Osenkowski

ALSO PRESENT:

MS. BARBARA VARNER

MR. S. GARETH GRAHAM

I N D E X

WITNESS

	Hon. Harold E. Sheely	Examination
By Ms. Wallet		4, 120
By Mr. Thomas		99
By Mr. MacMain		113
By Mr. Adams		118

EXHIBITS

	Sheely Deposition Exhibit Number	Page
1	3-page memo, 7/11/97, to Ward and Deluce from Sheely	21
2	5-page memo, 4/25/97, to Hartnett from Varner	65
3	1-page memo, 7/17/97, to Ward and Deluce from Sheely	76
4	1-page memo, 7/8/97, to Sheely from Hartnett	84

\* \* \* \* \*

STIPULATION

It is hereby stipulated by and between the  
respective parties that sealing, certification and filing are  
waived; and that all objections except as to the form of the  
question are reserved until the time of trial.

**HON. HAROLD E. SHEELY**, called as a witness, being  
duly sworn, was examined and testified, as follows:

BY MS. WALLET:

Q. Good morning, Judge Sheely.

A. Good morning, Ms. Wallet.

Q. I'm Debra Wallet. I'm here representing Barbara  
Varner in an action that has been brought against Mr. Graham,  
Mr. Osenkowski, Cumberland County and the Ninth Judicial  
District.

Is there any reason, sir, today, why you could  
not answer my questions truthfully and completely?

A. Not to my knowledge.

Q. If at any time you do not hear me, may we please  
have an agreement that you will ask me to repeat the  
question?

A. I will.

Q. Or if at any time you don't understand my  
question, can we agree that you will ask me to repeat that  
question so that you do understand it before you attempt to

5

6

1 answer it?

2 A. I will.

3 Q. Tell me, sir, what preparation did you make today  
4 for your deposition?

5 A. Yesterday I had a meeting with Attorney Williams  
6 for several hours, and we went over generally who had  
7 testified before and, I don't know, we just talked generally  
8 about the case. I told her about my background, what I did  
9 before, and --

10 Q. Did you review any transcripts?

11 A. I got several places I was given a transcript of  
12 where I was named, I believe, by Mrs. Varner in her  
13 deposition. I did see most of that.

14 Q. Okay. And did you review any documents in  
15 preparation for today?

16 A. I think the documents I already had. I don't  
17 think we reviewed any specific documents yesterday except the  
18 deposition documents. That was it.

19 Q. Okay. Now, you said that you already had these  
20 documents. Was there a file that you had taken with you when  
21 you retired from the court?

22 A. No. This is all. The first thing I got was a  
23 copy of the Complaint that was filed I see about April of  
24 2001. At some point after that, why, I was given a copy of  
25 the Complaint by Ms. Williams.

7

8

1 Q. Would you tell me, sir, when did you first learn  
2 that Barbara Varner had made some allegations of sexual  
3 harassment?

4 A. You mean timewise? Probably somewhere around  
5 June or early July of 1997, somewhere in that area, I  
6 believe.

7 Q. And how did you learn it?

8 A. I learned it, one of the county solicitors had  
9 made a call to my office wanting an appointment to see me,  
10 and it was Mr. Deluce. And he did come in and see me. And  
11 that was the first that I ever heard anything about these  
12 problems between Mrs. Varner and Mr. Graham.

13 Q. Prior to that time, Mr. Osenkarski had not  
14 brought this matter to your attention?

15 A. Not to my knowledge, no. I never knew anything  
16 about it.

17 Q. Now, when Mr. Deluce called you to make an  
18 appointment, did he tell you the purpose of his appointment?

19 A. I don't believe he did.

20 Q. And when you met with him, was it just the two of  
21 you?

22 A. Yes.

23 Q. What did he tell you, sir?

24 MR. THOMAS: Objection. This is obviously  
25 complicated a little bit. We do continue to assert the

1 Q. And did you have any of the documents that you  
2 had authored as part of this Complaint or charge?

3 A. No. The only thing that I have was given to me.

4 Q. Did you speak to anyone else who is a witness to  
5 any of the facts involved in this case, prior to today?

6 A. I spoke to Judge Hoffer here several weeks ago,  
7 when I found -- after I found out when I was supposed to  
8 appear for a deposition I spoke to Judge Hoffer and asked him  
9 if he was involved, and he told me, yes, he was going to have  
10 a deposition, also.

11 As far as speaking to any of the other parties, I  
12 have not.

13 Q. Okay. Have you seen any of the other parties  
14 since your retirement?

15 A. I've seen Mrs. Graham. I've seen her since I  
16 retired. I was at the courthouse several weeks ago and I saw  
17 my former secretary and I saw some of the court reporters. I  
18 stopped in the office there.

19 Q. Have you talked to any of those people about this  
20 case?

21 A. No. I've tried to avoid that.

22 Q. And when you said you saw your former secretary,  
23 which secretary was that?

24 A. Sandy Davis. I've only ever had two secretaries:  
25 Mrs. Fry and Mrs. Davis.

1 attorney-client privilege with respect to Mr. Deluce, who was  
2 a county solicitor. We would object to any questions asking  
3 what the nature of the conversation was between counsel for  
4 the county and the Court in this circumstance. It's a little  
5 bit awkward because normally I would instruct the witness not  
6 to answer the question, although in the circumstances of this  
7 case I don't technically represent the judge.

8 MS. WILLIAMS: I join in the objection, and when  
9 there is a question that infringes on the privilege I will  
10 direct the deponent not to answer.

11 BY MS. WALLET:

12 Q. Did you understand my question, sir?

13 A. I understood the question but I understand I'm  
14 not supposed to answer it; is that correct?

15 MS. WILLIAMS: Would you repeat the question?

16 BY MS. WALLET:

17 Q. What did Mr. Deluce tell you?

18 A. Am I supposed to answer that?

19 MR. THOMAS: Can we have one minute, Deb?

20 MS. WALLET: Sure.

21 (Recess taken from 10:16 until 10:20 a.m.)

22 MS. WALLET: I believe when we broke I had asked  
23 my question and we were waiting for whether or not you would  
24 instruct the witness not to answer the question.

25 MS. WILLIAMS: I am going to instruct the witness

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1 BY MS. WALLET:  
2 Q. Now, Mr. Deluce came to see you and told you for  
3 the first time about these allegations that Ms. Varner had  
4 made; is that correct?  
5 A. Am I supposed to answer that?  
6 MS. WILLIAMS: That falls within the objection  
7 that we've articulated earlier as to the conversation between  
8 Mr. Deluce and Judge Sheely and, therefore, I'm directing  
9 Judge Sheely not to answer that question.  
10 BY MS. WALLET:  
11 Q. Did Mr. Deluce give you any documents at that  
12 time?  
13 MS. WILLIAMS: Hold on.  
14 Objection to that question as well, Ms. Wallet.  
15 We believe that goes to the privilege we've asserted, and I'm  
16 going to direct Judge Sheely not to answer that question.  
17 MR. THOMAS: We join in the objection.  
18 BY MS. WALLET:  
19 Q. As a result of this meeting with Mr. Deluce did  
20 you do anything?  
21 A. Yes.  
22 Q. What did you do?  
23 A. I wrote a letter to, a memorandum to, I believe  
24 it was John Ward and to Mr. Deluce.  
25 Q. Why did you write that memo?

1 A. I wanted them to know what action I had taken as  
2 a result of the information I had at the time.  
3 Q. After you met with Mr. Deluce but prior to  
4 writing your memorandum, did you attempt to acquire any  
5 information about the charges of Ms. Varner?  
6 A. I'm sure I probably spoke to Mr. Osenkarski about  
7 what I had heard. I don't recall any specific meetings, but  
8 I'm sure I would have, because it involved his department.  
9 Q. Is it your recollection, sir, that after you met  
10 with Mr. Deluce you called Mr. Osenkarski and met with him?  
11 A. I don't recall the specifics of calling him. I'm  
12 sure I would have met with Mr. Osenkarski after I found out  
13 about this.  
14 Q. Do you recall whether it was just the two of you,  
15 you and Mr. Osenkarski?  
16 A. I'm sure it was, yes, at that time.  
17 Q. What do you remember about that conversation?  
18 A. I don't remember anything specifically about it.  
19 Unfortunately, I don't remember any specifics.  
20 Q. Well, do you think you said to him: I've learned  
21 about something in your office?  
22 MR. ADAMS: Objection. You're asking the judge  
23 to speculate and it's not an appropriate question. Either he  
24 knows or he doesn't know.  
25 MS. WILLIAMS: You can answer, judge.

15

16

1 THE WITNESS: Would you ask me the question  
2 again?  
3 BY MS. WALLET:  
4 Q. Did you say something to him such as: I've  
5 become aware of a problem involving a probation officer?  
6 A. I'm sure -- Ms. Wallet, I don't recall any  
7 specifics, that's a long time ago, but I'm sure that I did.  
8 That's why I would have went to see him, and I was trying to  
9 find out what was going on at that time then between  
10 Mr. Graham and Mrs. Varner as far as the office was  
11 concerned.  
12 Q. Do you remember what Mr. Osenkarski told you in  
13 response to your questions?  
14 A. Not specifically, no.  
15 Q. Do you remember whether he made any comments  
16 about the validity of Ms. Varner's charges?  
17 A. I cannot honestly say that I remember any  
18 specific remarks that Mr. Osenkarski made. It's been too  
19 long a time.  
20 Q. Did you make any notes of that meeting?  
21 A. No.  
22 Q. Do you recall anything about the meeting with  
23 Mr. Osenkarski?  
24 A. The only thing I can say at this time, and I'm  
25 saying this from what I wrote in my letter of July 11th, I

1 think it was probably Mr. Osenkarski had told me that  
2 Mr. Graham had used -- he had heard him use some abusive  
3 language towards Mrs. Varner, some swear words. And I'm  
4 certain that's who told me that. And that's the reason I  
5 suspended Mr. Graham then for three days for any improper  
6 language that he might have used. I'm sure it's  
7 Mr. Osenkarski that told me.  
8 Q. When you met with Mr. Osenkarski, did you have  
9 any information at that time that there was an alleged affair  
10 between Mr. Graham and Ms. Varner?  
11 MR. THOMAS: Objection to the form. I'm not sure  
12 his testimony was that he met with Mr. Osenkarski. I may  
13 have misheard, but I thought his testimony was that he had a  
14 conversation with him. He may answer.  
15 MS. WILLIAMS: Go ahead, Judge.  
16 THE WITNESS: I did not know anything about the  
17 affair until sometime after Mr. Deluce came in and sometime  
18 after I saw Mr. Osenkarski. Mr. Graham and his wife appeared  
19 in my office and that's when I found out about the affair.  
20 BY MS. WALLET:  
21 Q. Okay. Well, let's clarify Mr. Thomas's  
22 objection. Did you meet with Mr. Osenkarski, or did you just  
23 have a conversation with him perhaps over the telephone?  
24 A. I think I went down to the Probation office and  
25 spoke to him down there. That would be my recollection.

17

18

1 Q. Would that have been customary for you to do,  
2 rather than to call him to your office?  
3 A. Yes. Very often I would walk down to the  
4 Probation office. They were down on the third floor, I was  
5 on the fourth floor. A lot of times I would just walk  
6 directly down there if I had something to discuss with a  
7 probation officer. If I didn't want anyone to hear what was  
8 going on, why, I would call them up to my office, but other  
9 than that, I would go down there quite often.  
10 Q. So you think Mr. Osenkowski did confirm that  
11 Mr. Graham used the F word?  
12 A. I think he did, yes. That was the reason why I  
13 felt that this type of thing should not go on and the reason  
14 I suspended Mr. Graham for three days.  
15 Q. Did you ask Mr. Osenkowski whether Mr. Graham  
16 used any other language particularly toward the women in the  
17 office?  
18 A. No, I didn't ask him that, to my knowledge. He  
19 obviously told me this or I wouldn't have known about it.  
20 Q. Do you believe that you had information about the  
21 use of the F word and you brought up the subject with  
22 Mr. Osenkowski? Or did he bring that subject up to you?  
23 MR. MACMAIN: Objection. He didn't say F word,  
24 he said swear word.  
25 MS. WALLET: I thought he did use the F word.

19

20

1 Mr. Osenkowski. I don't know if he gave it to Mr. Graham or  
2 not.  
3 Q. Who decided on a three-day suspension?  
4 A. I did.  
5 Q. How did you decide that, sir?  
6 A. Just decided that for using that type of  
7 language, why, that he shouldn't have used, why, I felt that  
8 the first time that would be an appropriate penalty for doing  
9 that. And I thought that up on my own.  
10 Q. Did you discuss that with anyone, specifically  
11 anyone in the Human Resources Department at the county?  
12 A. I don't think so. I think I did that on my own.  
13 Q. At any time up until your retirement did you seek  
14 any advice from anyone at the Administrative Office for the  
15 Courts?  
16 A. Advice? No.  
17 Q. Did anyone in the Administrative Office for the  
18 Courts give you any advice, whether or not you had solicited  
19 it?  
20 A. I don't recall. I don't think so. I wouldn't  
21 say definitely they didn't, but I don't recall of any advice  
22 ever given to me.  
23 Q. Did you direct Mr. Osenkowski to do anything as a  
24 result of the allegations that were brought by Ms. Varner?  
25 A. In my letter, I think in my letter with better

1 Well, let me be clear.  
2 BY MS. WALLET:  
3 Q. Did Mr. Osenkowski tell you that Mr. Graham used  
4 the F word?  
5 A. I think he did, yes.  
6 Q. And my question, sir, was: Did you ask  
7 Mr. Osenkowski: Have you ever heard this? Or did  
8 Mr. Osenkowski volunteer that information?  
9 A. I cannot answer that. I cannot accurately say  
10 whether I asked him or whether he told me without being  
11 asked, I don't know.  
12 Q. What was your purpose in having this conversation  
13 with Mr. Osenkowski?  
14 A. My purpose primarily was, you know, I knew  
15 Mr. Graham, I knew Ms. Varner for many years, and no employee  
16 deserves to be abused or harassed by another employee. So  
17 that's the reason I went down, to find out what I could. And  
18 that was the reason I suspended Mr. Graham, because I felt  
19 that by using this type of language that was not appropriate.  
20 Q. Did you suspend Mr. Graham for any other reason?  
21 A. No.  
22 Q. Did you tell Mr. Graham why he was being  
23 suspended?  
24 A. I don't recall if I did or not. I'm just trying  
25 to think who I -- I sent a copy of this letter to

1 supervision both parties can continue their good work in the  
2 office, and I would -- up to this time I believe that  
3 Mrs. Varner received her work assignments I guess from  
4 Mr. Graham. And I directed that this type of relationship be  
5 terminated and one of the other probation officers, Sam  
6 Miller was supposed to work in the future with Mrs. Varner on  
7 assignments and not Mr. Graham.  
8 Q. And whose idea was that, sir?  
9 A. I think it was mine. I don't think -- I don't  
10 think Mr. Osenkowski is the one who set this up. In any  
11 event, I thought it was a good way to do it. Either if it  
12 was suggested by Osenkowski or me, I thought that the two of  
13 them, with what was going on now, be better off to have  
14 another PO involved with Mrs. Varner.  
15 Q. And when you say what was going on, what do you  
16 mean by that?  
17 A. Well, what was going on in their relationship and  
18 then in the office where these, that resulted in this  
19 language being used. It's obvious that the two of them  
20 weren't getting along, and that was -- they had always gotten  
21 along well in the past.  
22 Q. When you say "in my letter," are you referring to  
23 your July 11 memorandum to John Ward and David Deluce?  
24 A. Yes, that's correct.  
25 Q. Let's mark that so that you and everyone else



25

1 Mrs. Graham had been told of the affair?

2 A. I don't think so. I don't recall any indication  
3 that she knew about it before this.

4 Q. And what was her reaction to Mr. Graham's  
5 statements to you about the affair?

6 A. Well, she was obviously upset. She was crying, I  
7 know that. I remember that. Just like any other wife, I  
8 guess, when you're told something like this.

9 Q. What did you say to them?

10 A. I don't recall what specifics I would have told  
11 them. I'm certain that I told them I didn't approve of such  
12 a relationship. And I knew they had children. I certainly  
13 I'm sure told them that I hoped that they could get these  
14 matters resolved, that they would not involve some type of a  
15 separation that would certainly involve the children, if that  
16 had to happen.

17 Q. Did you believe Mr. Graham when he told you that  
18 he had had a sexual relationship with Ms. Varner?

19 A. Yes.

20 Q. Why did you believe him?

21 A. I guess I thought, you know, for a man to bring  
22 his wife in to the president judge and admit to having a  
23 sexual relationship with one of his co-employees in front of  
24 his wife, that -- I don't think men would do that unless what  
25 they're saying was true. That would be my thinking on that.

27

1 opinion of Ms. Varner, or whether he came to you to offer  
2 that opinion?

3 A. I don't remember how it came about. It certainly  
4 came about, and whether the discussion was had between me and  
5 Mr. Osenkarski and Mr. Graham, I guess, as to whether or not  
6 she should be hired as a probation officer, I think he was --  
7 thought she had done a good job, at least what he told me,  
8 with Children and Youth Services.

9 Q. Had you had any association with Ms. Varner when  
10 she worked at Children and Youth?

11 A. I'm certain that possibly she had some cases  
12 involving me in court. I don't remember that specifically.  
13 I can't say specifically.

14 Q. Is it your recollection that you really didn't  
15 know Mrs. Varner at the time that you hired her into the  
16 Probation office?

17 A. Just from seeing her around, I'm sure I saw her  
18 around, because I think at the time they were on the third  
19 floor of the courthouse, we were on the fourth floor, and I'm  
20 sure Mrs. Varner might have had some cases before me. I  
21 don't remember how many. I'm sure I knew who she was.

22 Q. Back to the time of the meeting between you and  
23 Mr. Graham and Mrs. Graham. At that time did you have any  
24 evidence other than Mr. Graham's statements that Mr. Graham  
25 was having an affair with Ms. Varner?

26

1 Actually, of course, I wasn't with him so I don't know. But  
2 that would be my reason for believing him:

3 And also, you know, I know he and Mrs. Graham had  
4 always had a good relationship. In fact, it was Mr. Graham  
5 that I remember was really anxious to have Barbara hired, and  
6 they had always had a good relationship, and I couldn't  
7 believe that all of a sudden they were at each other or he  
8 was at her or making comments or something in the office  
9 unless there would be some reason for it. So that would be I  
10 guess was why I believed him at that time as to what was  
11 taking place.

12 Q. I believe you said that you thought that Gary  
13 Graham and Barbara Graham had had a good relationship.

14 A. I'm sure they are. Both Barbaras are -- I meant  
15 Barbara Varner. I know they did, over a period of years.

16 Q. Now, you said that you believed that Mr. Graham  
17 had something to do with Ms. Varner being hired?

18 A. I remember that, yes.

19 Q. What do you remember about that?

20 A. The only thing I remember -- of course, I had to  
21 approve it. Now, I wasn't initially involved in why she  
22 wanted the job there, but I know, I can remember that  
23 Mr. Graham definitely thought that she would be a good  
24 employee for the county. I remember that.

25 Q. And do you recall whether you asked him his

28

1 A. No, I did not.

2 Q. Did he offer to you at that time, he, Mr. Graham,  
3 offer to you at that time any evidence of this affair?

4 A. I don't recall of any evidence being offered. I  
5 think he might have said that he thought he might be able to  
6 get some motel receipts or something at that time, but I  
7 don't -- I don't recall any evidence that was presented other  
8 than what he told me at that time.

9 Q. Did Mrs. Graham confirm that she had believed an  
10 affair was going on?

11 A. I don't recall any statements that she made, that  
12 she felt before this meeting that her husband was having an  
13 affair with anyone.

14 Q. Did Mrs. Graham ask you to do anything with  
15 regard to her husband and his continued employment as a  
16 probation officer?

17 A. I don't remember that, whether she asked me  
18 anything or not.

19 Q. Did you tell Mr. and Mrs. Graham that you  
20 intended to do anything to investigate these allegations of  
21 an affair?

22 A. I don't recall.

23 Q. How long would you say that Mr. and Mrs. Graham  
24 were in your office?

25 A. I don't recall that, either, really.

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1 well.  
 2 I think the timewise, Osenkarski I guess was a  
 3 senior man timewise in the Department. I believe Mr. Graham  
 4 was probably in the Juvenile section was probably second in  
 5 time, I think. There were other probation officers in Adult  
 6 that had maybe more time. So they worked very close together  
 7 and as far as I knew they were always good friends, yes.  
 8 Q. Would you say they were buddies?  
 9 A. I don't know of what they did after they left  
 10 work. I don't know that.  
 11 Q. Did you ever describe them as buddies?  
 12 A. I don't know. I don't recall saying that. I'm  
 13 sure they were, though.  
 14 Q. Do you recall referring to Mr. Osenkarski and  
 15 Mr. Graham as asshole buddies?  
 16 A. No. I don't recall that, no. I know they were  
 17 buddies. I don't recall ever saying they were asshole  
 18 buddies.  
 19 Q. Is that a term that you might have used?  
 20 A. I don't recall using it.  
 21 Q. Do you think you didn't use it?  
 22 A. Pardon me?  
 23 Q. Do you think you did not use it?  
 24 A. I don't think I actually referred to them in that  
 25 manner.

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1 instances, but I think there might have been times when I  
 2 observed this. Not in his work but maybe on other things.  
 3 That would be my recollection.  
 4 Q. And what other things would those be?  
 5 A. I don't recall specifically how I knew this. I  
 6 just had that opinion that he would be excitable sometimes.  
 7 Just like anyone else when certain things would come up, he  
 8 might be excitable about them.  
 9 Q. Did you ever observe him to be loud?  
 10 A. I heard him talk loud already, yes, I'm sure I  
 11 did that.  
 12 Q. Did you observe him to be a hot head of sorts?  
 13 A. I don't recall observations of being a hot head,  
 14 no.  
 15 Q. Did you ever hear any complaints about  
 16 Mr. Graham?  
 17 A. You mean how he did his job as a probation  
 18 officer?  
 19 Q. Yes, sir.  
 20 A. No, I don't think I heard any specific complaints  
 21 about how he did his job.  
 22 Q. When you campaigned for office at one time did  
 23 you campaign against Sylvia Rambo?  
 24 A. That was a judicial election, yes.  
 25 Q. And when was that, sir?

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1 MR. ADAMS: Objection, asked and answered.  
 2 THE WITNESS: I know they were good friends.  
 3 BY MS. WALLET:  
 4 Q. You don't believe that you told Ms. Varner that  
 5 you thought Mr. Osenkarski and Mr. Graham were buddies or  
 6 asshole buddies?  
 7 A. I don't recall that, no. I'm certain if she  
 8 would have asked me, if it come up I would have certainly  
 9 said they were friends. I'm certain she knew that I knew  
 10 they were friends. But whether or not I ever used the word  
 11 asshole with it, I don't recall of ever using that.  
 12 Q. Now, you said she would know that you knew they  
 13 were friends. How would she know that?  
 14 A. Well, because I was, like I said, our office, the  
 15 judge's office was fourth floor, their office was third  
 16 floor. I was down there quite a bit and we would talk and be  
 17 together. I'm certain she saw that, Barbara saw that. So  
 18 I'm certain she realized we were all good friends.  
 19 Q. Did you know Mr. Graham to have a reputation for  
 20 being excitable?  
 21 A. Yeah, I knew that he was excitable sometimes. I  
 22 don't recall specifically how that came about, but he would  
 23 get excited sometimes, I think.  
 24 Q. Did you ever observe that?  
 25 A. I think I did probably. I don't recall specific

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1 A. That was in 1977.  
 2 Q. Were you aware of any allegations at that time  
 3 that Mr. Graham had made statements about Ms. Rambo?  
 4 A. No, not that I recall.  
 5 Q. Do you recall any controversy surrounding the  
 6 campaign of Ms. Rambo and Mr. Graham?  
 7 A. No, I don't recall any.  
 8 Q. You were aware, sir, that in or about July or  
 9 August of 1997, a couple of months before you retired, the  
 10 Probation Office was split into the Juvenile and Adult  
 11 Probation?  
 12 A. Yes. I think maybe that happened, I don't know,  
 13 I think maybe that happened in '96. I'm not really sure.  
 14 That's been -- that's when Mr. Bolze left, and at that time  
 15 we split the Adult and Juvenile in separate sections with  
 16 separate supervisors. I think it was in '96, although I  
 17 wouldn't swear to that.  
 18 Q. No matter whatever time it was, did you make the  
 19 decision to split those two offices?  
 20 A. Yes.  
 21 Q. And why did you make that decision?  
 22 A. At the time I believe I checked around and other  
 23 counties our size, I believe that's the way they had their  
 24 Probation Departments set up, separate Juvenile, separate  
 25 Adult. At the time I thought that administratively it would

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1 letter from Ms. Varner following your July 11th, '97, letter?  
 2 A. No, I don't recall of any.  
 3 Q. Judge, do you recall anybody, either Ms. Varner  
 4 or anybody on her behalf, I guess, firing back or responding  
 5 to your July 11th, '97, memo that something was incorrect in  
 6 there?  
 7 A. I don't recall of any, no.  
 8 Q. You had said earlier that Mr. Graham on occasion  
 9 like anyone else can be excitable. Do you remember stating  
 10 that?  
 11 A. That's what I recall, yes.  
 12 Q. At any point did you ever find him to be  
 13 inappropriately excitable?  
 14 A. As of now, no, I don't recall that he was  
 15 inappropriately excitable. I don't even remember anymore  
 16 what the excitement was about. I know that occasionally it  
 17 did take place.  
 18 Q. You had also mentioned that you were aware or  
 19 been told that Mr. Graham on occasion was loud.  
 20 A. Yes, I was.  
 21 Q. At any point did you ever observe or were you  
 22 told that he was inappropriately loud?  
 23 A. No, I don't recall what the situations were that  
 24 led to that.  
 25 MR. MacMAIN: That's all the questions I have.

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1 Q. Are you two friends?  
 2 A. We never went out socially or anything, but  
 3 professionally we were good friends.  
 4 Q. Other than the courthouse, therefore, you  
 5 wouldn't see him other than in a courthouse setting?  
 6 A. I don't recall ever being in his presence outside  
 7 of any courthouse function.  
 8 Q. This is going to be a different question for you,  
 9 but did you conspire in any way with Mr. Osenkarski to cover  
 10 up, hide, not disclose, any allegation of discrimination made  
 11 by Ms. Varner?  
 12 A. No. I never agreed with them to do anything  
 13 concerning those allegations.  
 14 Q. Okay. And you certainly -- did you conspire in  
 15 any way with Mr. Osenkarski to discriminate against  
 16 Ms. Varner in any way that you can think of at all?  
 17 A. I never did, no.  
 18 Q. How about Mr. Graham? Did you ever conspire with  
 19 Mr. Graham to --  
 20 A. No.  
 21 Q. -- try to refute any allegations by Ms. Varner?  
 22 A. No.  
 23 MR. ADAMS: Thank you, your Honor.  
 24 MS. WILLIAMS: Are there anymore questions?  
 25 MS. WALLET: Yes, I have a few.

1 Thank you.  
 2 MR. ADAMS: 10 seconds.  
 3 MS. WILLIAMS: Can we go off the record for a  
 4 second?  
 5 BY MR. ADAMS:  
 6 Q. Good afternoon, your Honor. Again, I represent  
 7 Mr. Osenkarski. I have a few more questions and hopefully  
 8 we'll be done.  
 9 As a follow-up to Mr. MacMain's questions of your  
 10 visits to the Probation Department, I want ask you, did you  
 11 ever observe any conduct by Mr. Osenkarski which you deemed  
 12 inappropriate upon your visits to the Probation Department?  
 13 A. No, I never observed this.  
 14 Q. Did you ever observe any language which you felt  
 15 was considered sexually explicit by Mr. Osenkarski while  
 16 visiting that department?  
 17 A. No, not while I was there.  
 18 Q. And did you ever observe any language from  
 19 Mr. Osenkarski which you just felt was inappropriate at all,  
 20 any language at all, your Honor?  
 21 A. No, I don't -- I can't recall any.  
 22 Q. Okay. How well did you know Mr. Osenkarski?  
 23 A. Well, like I said, I started, I was a DA from '68  
 24 to '76, and I believe Mr. Osenkarski was employed by the  
 25 county back in those days. So I knew him very well.

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1 BY MS. WALLET:  
 2 Q. Judge Sheely, you said that you never saw  
 3 Mr. Osenkarski in a setting outside of work.  
 4 A. Basically, I don't recall of any. It's possible.  
 5 Q. Did you ever see Mr. Graham on occasions outside  
 6 of work?  
 7 A. I saw -- I think I was present when he was  
 8 married. They got married in a Catholic church over in  
 9 Penbrook somewhere, I saw him then. But I don't -- I don't  
 10 recall if I ever went to his home or anything after that or  
 11 not. It's possible I did, but I don't recall.  
 12 Q. Were you a guest at the wedding, sir, or did you  
 13 perform the marriage ceremony?  
 14 A. No, this was done in the church.  
 15 Q. You were a guest?  
 16 A. I was just a guest, yes.  
 17 Q. Were both you and your wife invited to the  
 18 wedding?  
 19 A. Yes, we were.  
 20 Q. Do you recall any other times when you saw  
 21 Mr. Graham outside the work setting?  
 22 A. I don't recall any. I wouldn't say there weren't  
 23 any, but at this point I don't recall any.  
 24 Q. Did you attend Mr. Graham's mother's funeral?  
 25 A. Her funeral? I don't recall if we did or not, to